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26th AMENDMENT: A STEP TO UNDERMINE JUDICIAL INDEPENDENCE.

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Abstract
This study explores the intersection of legal reforms and judicial crises in Pakistan, with a focus on the 26th Constitutional Amendment and its naming as a "Black Document" for the judiciary in pakistan. It examines how this amendment, intended to address governance challenges, became a source of significant controversy within the legal and political spheres. Using a qualitative research approach, the study delves into the historical evolution of judicial reforms in Pakistan, the objectives and provisions of the 26th Amendment, and the events that led to the judiciary's protest. The findings indicate that, although the amendment was presented as a measure to enhance governance, it raised serious concerns about judicial independence due to perceived political interference. The judiciary's declaration of a "Black Day" on its passing day (21st of October, 2024 Parliament of Pakistan passed 26th Amendment) underscores broader tensions between the judiciary and other branches of government, revealing structural and procedural weaknesses within Pakistan's legal system. A comparative analysis with similar legal systems highlights the necessity of safeguarding judicial independence during reform efforts. This research contributes to the ongoing discourse on balancing legal reform with judicial autonomy and proposes strategies to enhance transparency, stakeholder consultations, and institutional integrity. Addressing these challenges will help Pakistan mitigate judicial crises in the future and ensure the effective delivery of justice.

1. INTRODUCTION

Judiciary is considered as a critical component of the Constitution that supports the rule of law, guarantees justice, and serves as an antidote to the abusive exercise of power in a democracy. However, in Pakistan, the judiciary has also found itself not immune to political dynamics, encountering political meddling and challenges to its independence. One of the most notable aspect of this struggle was the passage of 26th Constitutional Amendment which led to serious debate concerning the independence of judiciary and the separation of powers. Furthermore, the judiciary's declaration of a "Black Day" in response to perceived threats reflects a continuing dilemma of legal reforms clashing with institutional independence. This study endeavors to study such developments and hopes to understand the intricate relationship between judicial crises and judicial reforms, while also looking at their effect on

governance and justice administration in Pakistan (Munir, 2018; Kanwel et al., 2020).

Whereas much prior work has solely considered the narrow passage of the 26th Amendment, this kind of scholarly paper does not merely emphasize the passage of the 26th Amendment in isolation, but rather grounds it within a wider socio-political context considering the events leading up to it, including the independence movement. Pakistan's colonial past has influenced its legal system, which has in turn affected Pakistan's evolution as a fast-moving democracy, frequently veering toward military rule in moments of crisis or authoritarianism. Under those circumstances, constitutional amendments can become flash points that are revealing of deep rifts in both the legal and the political systems. On the surface, the 26th amendment was presented as a means to tighten governance, but its real world impact has been argued to be its antithesis, an obliteration of judicial independence that curbs the neutrality of the judiciary (Rafiq, 2022; Khan ., 2020).

It is an important study because it deals with tension between legal reforms and judicial independence. While reform is critical to keeping institutions relevant to evolving societal imperatives and governance challenges that cannot be at the cost of the integrity of the judiciary. Based on data collected up to October 2024, study reveals an urgent need to maintain independence where the judicial sector is faced with extreme political pressures and governance deficits.

Literature Review

The existing studies on judicial independence, constitutional amendments, and political interference—particularly in the context of Pakistan—offers valuable insights, with comparative references enriching the discussion. Judicial independence is widely regarded as a cornerstone of democracy, ensuring that the judiciary can make decisions free from external influence by the legislature, executive, or private entities.

Judicial impartiality is a crucial institutional safeguard, warning that without it, public confidence in the rule of law would erode. Their argument highlights the importance of the separation of powers, a principle that Pakistan has struggled to uphold due to recurring constitutional crises and political instability. The judiciary in Pakistan has frequently faced challenges in maintaining its independence amidst political interference (Shetreet and Turenne (2013). The judiciary's evolving role over the decades and examines how political and military interventions have influenced its decisions. This historical narrative is particularly useful in understanding the broader context in which the 26th Constitutional Amendment should be analyzed (Hamid, 2017).

Constitutional amendments can be a double-edged sword—either reinforcing governance or entrenching institutional conflicts (Hirschl. R, 2004). Constitutional reforms in Pakistan are characteristic of the fact that short-term political interests often supersede the long-term goals oriented towards institutional stability in Pakistan. In particular the 26th Amendment has been criticized for not involving stakeholders (Zia and Waheed 2021). Politically motivated amendments endanger estrangement of other critical institutions — the judiciary for example

Pakistan's judiciary has always been a paradox, balancing between the protector of constitutional rights and at times the facilitator of political interests. Saeed Shafqat's Civil-Military Relations in Pakistan (1997) delves into this duality, exploring how the judiciary has performed a balancing act between military regimes and civilian governments. This is especially useful in understanding the judiciary's decision to observe a "Black Day" — as it highlights its resistance to perceived threats to its autonomy. Recent studies, focus on South Asia and examine judicial crises in neighboring countries like India and Bangladesh, provide more comparative perspectives as to how one can manage similar challenges. The important role of public opinion and civil society in defending judicial independence, so critical to the fight against the 26th Amendment, is evident in these works (Ahmed and Shah 2022).

METHODOLOGY

This study analyzes legal reforms and judicial crises in Pakistan using qualitative research methodology, primarily discussing the 26th Constitutional Amendment and the judicial response to the respective legislation. A doctrinal study, it uses

primary legal sources — statutory texts, judicial rulings, government documents — to analyze the amendment's consequences. Secondary sources provide reports on the historical, political, and social aspects of the issue through scholarly and longer-form writing.

For a deeper analysis, the study includes case studies on the so-called Black Day events. This methodological pairing permits an immersive examination of judicial resistance—and the effect it has on institutional autonomy. Here data collection focuses on trustworthy and quality sources. It draws on theoretical perspectives such as the separation of powers and the judicialization of politics to find linkages and disjuncture between legal reforms and judicial independence. It is the justified need to understand a complex, multi-dimensional problem in its wider socio-political and institutional context. The research integrates legal and theoretical perspectives to provide a holistic view of the issues confronting the judiciary of Pakistan and suggest measures for its reform.

Historical Context of Judicial Reforms in Pakistan

Judicial reforms in Pakistan have a violent political history and constitutional development. As one of the three organs of the state, the judiciary has also got often embroiled with executive and legislative tussles. Such disputes are often rooted in constitutional amendments, political interference and more general governance issues. This section analyzes the constitutional progression in Pakistan, earlier constitutional amendments, and their political-historical implications on the administration of the judiciary that results in the 26th Constitutional Amendment in Pakistan.

Growth of the Constitution and Legal Reforms

Pakistan became an independent state in 1947, beginning the process of developing constitutions as it implemented the Government of India Act, 1935, as an interim constitution. It was a first sign and a major step, after all, as there was indeed for the first time a parliamentary system, with the 1956 Constitution. However, its implementation encountered several obstacles, including political instability and military coups. This constitution was finally abrogated in 1958, and the 1962 Constitution was introduced under military rule, an era in which the judiciary's traditional independence was diminished and executive authority was centralized, leaving little in the way of institutional checks.

Civilian rule that returned with the 1973 Constitution sought to restore parliamentary democracy and strengthen the judiciary as the custodian of fundamental rights and the constitutional arrangement. Since that time, many reforms have taken place to bolster the strength and independence of the judiciary. However, most of the changes so far have been knee-jerk, implementing politically motivated fads instead of building a coherent vision of an autonomous judiciary. Some of the key reforms which include granting powers for judicial review, forming Supreme Judicial Council for accountability and introducing procedural changes to accelerate case resolution. However, inefficiencies in these processes still exist, including a backlog of cases, a lack of resources, and political interference, which all serve to dampen the ability of the judiciary to provide effective justice (Gondal & Hatta, 2023).

Earlier Constitutional Amendments and Their Effect on Judiciary

A significant number of amendments to Pakistan's Constitution have transformed the judiciary in this country, both positively and negatively. Two amendments, the 8th and the 18th, highlight the current battle between the judiciary and the other branches of government. The 8th Amendment, which was promulgated during the military rule of General Zia-ul-Haq brought about fundamental changes in the nature of government, increasing the power of the executive and undermining the independence of the judiciary. This amendment gave the executive the ability to influence judicial appointments and decisions that helped consolidate his authoritarian regime.

In contrast, when the 18th Amendment was passed in 2010 after three democratic governments, it was aimed at fixing these problems by restoring independence in the judiciary. It stripped the president of the power to dissolve parliament at will, and set up a more transparent system for judicial appointments through the Judicial Commission of

Pakistan. Even this amendment wasn't without contention, and arguments over the political makeup of the commission and the risk of favoritism continued.

Other amendments like the 17th Amendment under General Pervez Musharraf also had grave implications for governance and the judiciary. The 17th Amendment institutionalized Musharraf's simultaneous role as president and army chief, which further widened the gulf between the executive and the judiciary. These changes highlight the tension that exists between the political forces and the judiciary, which although appears to be free from shackles, is constantly swayed by institutional and political influences.

Elements Leading to the 26th Amendment

The 26th Constitutional Amendment was designed as a corrective for the governing and integration discrepancies facing these today developed territories after their inclusion within Khyber Pakhtunkhwa beneath the 25th Amendment. Specifically, the gaps were most pronounced in terms of financial resources, human development, and infrastructure. The merger integrated these areas into constitutional Pakistan, moving away from a semi-autonomous status under colonial-era policies. The shift created many legal and administrative headaches. In response to these issues of misrepresentation, the 26th Amendment provisioned extra seats in both the National Assembly as well as the provincial assemblies for the regions in question. Although this decision appeared to reinforce the democratic representation of important institutions, it was accused of being passed so hastily without their consulting more stakeholders as the judiciary. The amendment soon drew concern about its broader implications for judicial independence and governance. Political analysts said critics viewed the amendment as a measure in a bid by the executive branch to exert more control over institutional processes, which has soured relations with the judiciary. And finally, the political scene in Pakistan, which is polarizing in nature and lacks institutional safeguards, was also responsible for the crisis, triggering a judicial protest labelled as the "Black Day" when the judiciary protested against what it considered encroachment on its independence. This is a clear reassertion that judicial reform is still a work in progress and that the 26th Constitutional Amendment is in line with what we may see in the context of judicial reform in Pakistan today and in the future. It highlights the ongoing difficulties of reconciling legal change with institutional independence in a political landscape that has been characterized by crisis and conflict.

The Black Day for Judiciary

The imposition of "Black Day" by the Pakistani judiciary was a turning point in the national legal-political history. It was hardly a symbolic gesture; it was the judiciary's profound expression of frustration over political interference and its fear that its independence as an institution is being eroded. This came after a period of rising tensions between the executive and the judiciary, especially over the 26th Constitutional Amendment. Here is what Black Day is about, how it was declared, what it means for the judiciary of the country, and how the general public as well as the lawyers' community reacted to Black Day.

Actions Leading Up to the Black Day Declaration

The events that precipitated the "Black Day" declared by Pakistan's judiciary against the executive can be traced to tensions between the two institutions. Without getting into the full historical context here, it would rather be right that the tipping point was the passage of the 26th Constitutional Amendment in October 2024. The amendment raised internal alarm over an intensifying political assault on judicial independence. While the amendment was generally aimed at ensuring representation for the newly merged tribal areas in the National Assembly and Khyber Pakhtunkhwa, a faction within the judiciary perceived it as a direct threat to their independence, especially in terms of the enforcement of judgments and the extension of their jurisdiction over these "new" regions. The judiciary had a long history of being wary of government attempts to amass power and weaken its independence. This became a key point of contention when the judiciary objected to the amendment, impacting judicial authority, being drafted without adequate stakeholder consultation with judicial members. Extending the jurisdiction of the Supreme Court and Peshawar High Court to the

former FATA areas was required to fulfil legal obligations but was perceived as a politically expedient move that would empower the executive arm of the state by exerting more control over the judiciary in these areas. In addition, the fact that judiciary was left out during the amendment's drafting process added to the sense of being undermined (Minallah, 2024).

The response was not limited to this particular case, but part of a larger response to the increasing friction between the two branches of government. The judiciary had successfully resisted such executive pressure in the past, notably during the period when Supreme Court Chief Justice Iftikhar Muhammad Chaudhry held office, when the judiciary took a more assertive role in protecting its constitutional functions and curtailing executive power. Because of Pakistan's history of military coups and chronic political crises, the judiciary had always been pitted against the executive, especially in the country's political history. The Black Day was a watershed moment in that ongoing conflict; it signified that the judiciary was unwilling to falter in the face of those who wanted to decimate it. This was not an isolated episode, you see, there had been several episodes leading up to this that involved the judiciary raising concerns about executive action. And legal scholars and political analysts had increasingly started to single out attempts by the executive to influence judicial appointments and judicial outcomes as a very serious threat to rule of law.

Importance of the Black Day in Pakistan's Judicial History

The proclamation of a black day — which coincides with the 26th Constitutional Amendment — is of particular importance in the judicial history of Pakistan, especially given the longstanding tussle between the judiciary and the executive, and in particular during the imposition of martial law in Pakistan. This declaration was particularly exceptional in that, perhaps for the first time, the judiciary actively opposed an effort to amend the Constitution for partisan purposes. This moment was crucial in showcasing the judiciary's struggle for independence more broadly in a country known historically for executive overreach and military rule. Judicial independence, though enshrined in the Constitution, was often a shaky and denied right in Pakistan; but the Black Day was a strong reminder of the judiciary's resolve to perform its constitutional and noble role as provided in several provisions of the Constitution. It was a stern warning as well as an inspiring message, indicating that the courts, in the face of political pressure, had been critical to the democratic edifice.

The Black Day had both legal and symbolic significance, striking a chord among the legal community and civil society. It marked a nexus of decades of struggles by the Courts himself to regain its autonomy, and a progression of the struggle launched with the 2007 Lawyers' Movement, which had first succeeded in restoring the independence of the Judiciary under Chief Justice Iftikhar Muhammad Chaudhry. Though it happened in a different context and scale, Black Day too embodied the same ethos as the Lawyers' Movement: the judiciary was not going to be used as a pawn in the political game or for partisan agendas. As a result, the Black Day emerged as a momentous day in the judicial history of Pakistan, which reaffirmed the commitment of the judiciary to constitutionalism and the rule of law. It was all the more significant because it showed the judiciary's willingness to stand up to executive overreach, even against the backdrop of a constitutional amendment. It was a challenge unlike any that the judiciary had undertaken in decades, and it spared the judiciary from the passive responses of yore and made clear that it was doing everything possible to protect both its own independence and the separation of powers the Constitution ensures. The Black Day marked a significant turning point in the power struggle between the judiciary and the executive, the repercussions of which still resonate in the legal and political fabric of Pakistan today.

The Role of Political Meddling in Judicial Affairs

Politics has always interfered in judicial matters in Pakistan, which further complicated, as we have a governance model where an excessive executive influence and military involvement prevails in judicial matters. The 26th Constitutional Amendment, touted as a step toward political integration and expanding democratic representation, has turned yet another chapter in

the bitter battle for judicial independence. Pakistan has a track record of political interference in the judiciary particularly during military regimes, where military dictators undermined the judiciary to consolidate their power and provide legitimacy to their authoritarian rule. Even during civilian rule, the judiciary has endured chronic pressure from political forces seeking to influence judicial decisions to fall in line with the interests of the ruling party.

Most alarmingly, the 26th Amendment has met considerable alarm in the legal community especially as it emerged without consultation with the judiciary. Many view this as part of a broader political scheme to undermine the independence of the judiciary and to steer its decisions on politically charged matters. The extension of the jurisdiction of the Supreme Court and the Peshawar High Court to newly merged tribal areas is one of the most controversial elements of the law. Critics warn this could give the executive power to shape judicial outcomes in these areas in a way that promotes political ends.

In addition, the integrity of judges has also been questioned, because the appointment of judges is frequently based on political factors. As discussed further, the 26th Amendment exacerbates this concern — apprehensions persist that political pressure may be brought to bear to ensure the ascendancy of judges with sympathies to the executive towards the government-appointed executive, thereby diluting judicial independence even further.

Implications of the Crisis on Judicial Independence

In Pakistan, the 26th Constitutional Amendment unleashed a judicial crisis that we can call, for lack of a better term, the Dollar & Pound Crisis: the beginning of this crisis led to a huge burden the independence of the judiciary. Judicial independence is the bedrock of democracy, enabling courts to operate without political or executive interference. The crisis shook not just the judiciary but also echoed throughout Pakistan's political and legal landscape. It was a grave reminder of how vital judicial independence is for the rule of law in a democracy. The events also renewed calls for reforms, including the process for appointing judges, their accountability and the need for transparency. There was an increasing acknowledgment of the need for institutional protections against political interference with the judiciary, namely to make sure judicial conduct would be based on the law, not political motives.

And on a more systemic level, the crisis underscored the risks of eroding judicial independence in a country struggling with deeply rooted governance challenges." Strong, independent judiciaries are necessary not only for fair trials and the protection of human rights, but also to uphold public faith in the rule of law. In a politically polarized and unstable country like Pakistan, any threat to judicial independence is a threat to the entire constitutional framework. The Black Day and the 26th Amendment were a powerful reminder of the consequences of meddling with the political independence of the judiciary and the need to protect it from such interference.

Challenges and Recommendations

Legal reforms and judicial independence often face significant obstacles, but in Pakistan, these challenges are particularly pronounced, creating a perfect storm of complications that demand difficult yet necessary responses. The 26th Constitutional Amendment and the subsequent judicial crisis highlighted the precarious balance between advancing legal reforms—particularly in integrating peripheral regions—and safeguarding judicial independence. This tension underscores the ongoing struggle to balance the urgent need for reforms with the imperative to protect the judiciary from undue political influence. This section explores the challenges of reconciling reforms with judicial autonomy, offers policy recommendations to strengthen judicial independence and transparency, and identifies the key stakeholders whose involvement is essential to prevent future crises.

Challenges in Balancing Reforms and Judicial Independence

The ongoing struggle between Pakistan's executive and judicial branches plays a central role in the challenges of balancing legal reforms with judicial independence. Political reforms, often framed as solutions to key national issues (like integrating tribal areas into the broader framework of Pakistan),

frequently reignite debates about the judiciary's role. A prime example is the 26th Constitutional Amendment. While legal reforms are essential to respond to evolving political and social dynamics, they must not be used as a means to undermine judicial independence or make the judiciary more vulnerable to political influence. This is especially problematic in Pakistan, where the judiciary has often faced political pressure. Successive civilian and military governments have posed threats to judicial autonomy, with political parties attempting to sway judicial appointments and influence the judiciary's stance, thereby eroding the separation of powers among the executive, legislature, and judiciary.

In this environment, reforms—whether extending judicial jurisdiction to newly integrated areas or altering judicial oversight—can seem like efforts to integrate these populations. However, the failure to adequately consult the judiciary in the 26th Amendment highlighted the deep divide between legal changes and judicial independence. This exclusion speaks to a broader issue in Pakistan, where a lack of collaborative politics between state institutions exacerbates tensions. Without effective cooperation, it becomes difficult to strike a balance between the need for legal reforms and the defense of judicial autonomy.

A second major issue is the lack of transparent institutional mechanisms for judicial appointments and operations. When political influence dominates the judicial selection process, it results in the appointment of judges who may be aligned with the ruling party's interests. This undermines the judiciary's independence and its role as a check on executive power. The perception of political bias in judicial appointments erodes public trust, as citizens may believe that the judiciary is subject to political pressures rather than functioning as an impartial body (Mehboob, 2024).

Recommendations for Strengthening Judicial Autonomy and Transparency

In order to balance the two challenges of legal reforms and judicial independence, here are some of the recommendations to ensure judicial independence and transparency in Pakistan:

a. Enable Judicial Appointment Process Restructure: The process of appointing judges needs a complete overhaul; judicial competency and professionalism should take precedence over political allies. This may include creating an independent judicial commission in charge of making recommendations for judicial appointments in accordance with such attributes as legal knowledge, virtue and respect for the law. Members of the legal community and stakeholders beyond the political class should be included to ensure appointments are merit-based, not loyalty-driven.

b. Participatory Reform Process: The reform process needs to be more inclusive, with the judiciary being properly consulted and playing a significant role especially in amendment provisions affecting its functioning. The 26th Amendment also illustrated the danger of stripping away judicial review of constitutional alterations that enlarge or restrict judicial independence. A better solution would be partnership between the judiciary and parliament. Changes to the law should be discussed with the judiciary in advance to ensure that reforms are effective without infringing on judicial independence. Reforms need to respect the constitutionally guaranteed independence of the judiciary and should also be insulated from political interference.

c. Transparency and Accountability: Although judicial independence is vital, some transparency is required to sustain public trust in the judiciary. This could mean more transparency in judicial decision making, more accessible court proceedings to the public and improved clarity of judicial rulings. Furthermore, independent, periodic audits and oversight mechanisms should be enacted to ensure accountability while preserving the independence of the judiciary.

d. Constitutional protection: Pakistan should look to put in place constitutional provisions that explicitly outline the functions of each branch of government, especially with respect to the independence of the judiciary. Such protections would minimize deformation of democracy through future conflicts between the executive and judiciary by providing the judiciary with a commonly respected framework of independence that can

withstand shifts in political streams and administration.

Conclusion

This crisis highlighted the judiciary's vulnerability to executive over-reach and underscored the need for institutional guardrails to safeguard judicial independence. The implications of the 26th Amendment are profound and speak to the dangers of politicizing the judiciary. These cases are a pertinent reminder that good intentions aside, legal reforms must operate within constitutional parameters and with independent judiciary. Pakistan's judiciary needs sweeping reforms going forward and it is necessary to ensure transparency in the system, increase accountability, and enhance cooperation between branches of government. Creating an independent body to appointments of the judiciary, fostering public debate on reforms to the constitution, and an awareness initiative to enlighten people about the importance of the judiciary are important. Unless these challenges can be resolved, Pakistan's judiciary cannot fulfill this role as the protector of constitutional rights and a cornerstone of democratic governance.

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